IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

RSA.No. 55 of 2007()

A.S.99/2002 OF SUB COURT, KASARGOD
O.S.95/01 OF PRINCIPAL MUNSIFF COURT, KASARGOD

APPELLANT/APPELLANT/DEFENDANT:

DAINABI, AGED 46 YEARS,
S/O. MOHAMMED, RESIDING AT KUKNHIPALLA OF
MULIYAR VILLAGE, MALLA POST & VILLAGE,
KASARGOD TALUK AND DISTRICT.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS: RESPONDENT/PLAINTIFF:

P.M. ABBAS, AGED 38 YEARS,
S/O. ANDUKKA, RESIDING AT MULLERIA,
KARADUKA VILLAGE, MULLERIA POST,KASARGOD TALUK &
DISTRICT.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO. 55 OF 2007

Dated 1st February 2007

J U D G M E N T

Appellant is defendant in O.S.95/01 on the file Munsiff court, Kasargod. Respondent is the plaintiff. Under Ext.A1 agreement for sale, respondent agreed to sell plaint schedule property for a total consideration of Rs.1,85,000/-, on 20/1/2000. Rs.15,000/- was paid as advance. Respondent contended that thereafter Rs.5,000/- was paid on 25/1/2000, Rs.35,000/- was paid on 10/2/2000 and Rs.5,000/- was paid on 20/4/2000 and altogether Rs.60,000/- was paid towards the sale consideration and appellant failed to perform the agreement. Respondent sent Ext.A2 notice calling upon appellant to perform the agreement. Appellant under Ext.A3 reply disputed the payment of Rs.5,000/- on 10/4/2000. Respondent contended that appellant violated the terms of the agreement and is therefore entitled to realise the advance paid. Appellant contended that there was a mediation and he paid Rs.45,000/- out of

Rs.55,000/- remained and balance was adjusted towards damages sustained. According to appellant Rs.25,000/- was paid on 21/6/2000 under Ext.B2 receipt and under Ext.B3 receipt Rs.15,000/- was paid on 23/8/2000 and therefore respondent is not entitled to decree sought for.

2. Learned Munsiff on the evidence of PW1 and Dws.1 and 2 and Exts.A1 to A3 and Exts.B1 to B3 disbelieved the case of respondent with regard to payment of Rs.5,000/- on 10/4/2000. Learned Munsiff also found that Exts.B2 and B3 receipts were not executed by respondent and there is no evidence to prove the payment of Rs.40,000/- as alleged by appellant. Therefore, suit was decreed for realisation of Rs.55,000/- with interest at 6% per annum. Appellant challenged that decree and judgment before Sub court, Kasargod in A.S.99/02. Learned Sub Judge on re-appreciation of evidence confirmed the decree and judgment and dismissed the appeal. It is challenged in this appeal.

2. Learned counsel appearing for appellant was heard. Arguments of learned counsel appearing for appellant was that learned Munsiff and learned Sub Judge did not properly appreciate the evidence of Dws.1

and 2 and instead should have accepted the payments made under Exts.B2 and B3. It was argued that on comparison of signatures in Exts.B2 and B3 alone, the receipts should not have been disbelieved. According to learned counsel appearing for appellant, substantial question law involved in the appeal is whether courts below acted in accordance with law in granting the decree in favour of respondent and whether rejection of the plea of discharge is proper.

3. Learned Munsiff and learned Sub Judge elaborately considered the evidence. Ext.A1 agreement for sale was admitted. Payment made by respondent and received by appellant to the tune of Rs.55,000/- was also admitted. Though respondent further contended that there was a payment of Rs.5,000/-, courts below did not accept the same. Though appellant contended that the agreement was violated by respondent and therefore there was a mediation and Rs.15,000/- was adjusted towards the damages sustained no evidence was adduced to prove mediation or damages allegedly sustained. It was the case of appellant that under Exts.B2 and B3, Rs.40,000/- was paid. The question is whether appellant has paid any such amount and respondent received it. Relying on Exts.B2 and B3 receipts and evidence of

Dws.1 and 2, it was argued that discharge was proved. Learned Munsiff and learned Sub Judge on comparing the signature seen in Exts.B2 and B3, found that the signatures are not that of respondent. If appellant is not satisfied with the comparison of signature by the court, she could have sent Exts.B2 and B3 to an expert to get the opinion of expert. In the absence of any such evidence, learned Munsiff and learned Sub Judge compared the signature seen in Exts.B2 and B3 and arrived at a conclusion. That finding is a finding of fact. Both the courts accepted the case of respondent and disbelieved the case of appellant that Rs.40,000/- was not paid. Appreciation of evidence by the trial court and first appellate court was proper and not perverse. Exercising the jurisdiction under Section 100 of Code of Civil Procedure. Evidence cannot be reappreciated. No question of law much less any substantial question of law is involved in this case.

Second appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.